

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 44

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 16-41-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as provided in IC 16-41-10-2.5 and subsection (b), a person may not perform a screening or confirmatory test for the antibody or antigen to HIV without the **oral or written** consent of the individual to be tested or a representative as authorized under IC 16-36-1. A physician ordering the test or the physician's authorized representative shall document whether or not the individual has consented. The test for the antibody or antigen to HIV may not be performed on a woman under section 5 or 6 of this chapter if the woman refuses under section 7 of this chapter to consent to the test.

(b) The test for the antibody or antigen to HIV may be performed if one (1) of the following conditions exists:

- (1) If ordered by a physician who has obtained a health care consent under IC 16-36-1 or an implied consent under emergency circumstances and the test is medically necessary to diagnose or treat the patient's condition.
- (2) Under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an individual. A hearing held under this subsection shall be held in

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camera at the request of the individual.

(3) If the test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The test is ordered under section 4 of this chapter.

(5) The test is required or authorized under IC 11-10-3-2.5.

(c) A court may order a person to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

SECTION 2. IC 31-37-19-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) This section applies if a child is a delinquent child under IC 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be:

(1) ~~a sex crime listed in IC 35-38-1-7.1(e)~~ **an offense relating to a criminal sexual act (as defined in IC 35-41-1-19.3)** and the ~~crime offense~~ created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in IC 35-38-1-7.1(b)(8); or~~

(2) an offense ~~related~~ **relating** to controlled substances ~~listed in IC 35-38-1-7.1(f)~~ **(as defined in IC 35-41-1-19.4)** if the offense involved:

(A) the delivery by a person to another person; or

(B) the use by a person on another person; of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

(b) The juvenile court shall, in addition to any other order or decree the court makes under this chapter, order the child to undergo a screening test for the human immunodeficiency virus (HIV).

(c) If the screening test indicates the presence of antibodies to HIV, the court shall order the child to undergo a confirmatory test.

(d) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health.

(e) The state department of health shall do the following:

(1) Notify **potentially affected** victims of the ~~crimes listed in IC 35-38-1-7.1(e) and IC 35-38-1-7.1(f)~~ **offense relating to a criminal sexual act (as defined in IC 35-41-1-19.3) or offense relating to controlled substances (as defined in IC 35-41-1-19.4)** of the HIV screening results.

(2) Provide counseling regarding HIV and a referral for appropriate health care to the victims.

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SECTION 3. IC 31-37-19-17.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17.4. (a) This section applies if a child is a delinquent child under IC 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be a ~~sex crime listed in IC 35-38-1-7.1(e)~~; **an offense relating to a criminal sexual act (as defined in IC 35-41-1-19.3).**

(b) The juvenile court may, in addition to any other order or decree the court makes under this chapter, order:

- (1) the child; and
- (2) the child's parent or guardian;

to receive psychological counseling as directed by the court.

SECTION 4. IC 35-38-1-9.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9.5. A probation officer shall obtain confidential information from the state department of health under IC 16-41-8-1 to determine whether a convicted person was a carrier of the human immunodeficiency virus (HIV) when the crime was committed if the person is:

- (1) convicted of a ~~sex crime listed in section 7.1(e) of this chapter~~ **an offense relating to a criminal sexual act** and the ~~crime offense~~ created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in section 7.1(b)(8) of this chapter~~; or
- (2) convicted of an offense relating to controlled substances ~~listed in section 7.1(f) of this chapter~~ and the offense involved: the conditions described in section 7.1(b)(9)(A) of this chapter:

(A) the delivery by any person to another person; or

(B) the use by any person on another person;
of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

SECTION 5. IC 35-38-1-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.5. (a) The court:

- (1) shall order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the person is:

(A) convicted of a ~~sex crime listed in section 7.1(e) of this chapter~~ **an offense relating to a criminal sexual act** and the ~~crime offense~~ created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in section 7.1(b)(8) of this chapter~~; or

(B) convicted of an offense ~~related~~ **relating** to controlled substances ~~listed in section 7.1(f) of this chapter~~ and the

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offense involved: ~~the conditions described in section 7.1(b)(9)(A) of this chapter.~~

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact; and

(2) may order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the court has made a finding of probable cause after a hearing under section 10.7 of this chapter.

(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:

(1) obtain the medical record of the convicted person from the state department of health under IC 16-41-8-1(a)(3); and

(2) determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.

(d) A person who, in good faith:

(1) makes a report required to be made under this section; or

(2) testifies in a judicial proceeding on matters arising from the report;

is immune from both civil and criminal liability due to the offering of that report or testimony.

(e) The privileged communication between a husband and wife or between a health care provider and the health care provider's patient is not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in IC 34-6-2-80) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

SECTION 6. IC 35-38-1-10.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.6. (a) The state department of health shall notify victims of ~~the crimes listed in section 7.1(e) and 7.1(f) of this chapter~~ **an offense relating to a criminal sexual act or an offense relating to controlled substances** if tests

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conducted under section 10.5 or ~~section~~ 10.7 of this chapter confirm that the person tested had antibodies for the human immunodeficiency virus (HIV).

(b) The state department of health shall provide counseling to persons notified under this section.

SECTION 7. IC 35-38-1-10.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.7. (a) Upon:

- (1) written request made to a prosecuting attorney by an alleged victim of ~~a sex offense listed in section 7.1(c) of this chapter;~~ **an offense relating to a criminal sexual act;** and
- (2) after a hearing held under this section, a court entering a finding that there is probable cause to believe the alleged victim is a victim of ~~a sex offense listed in section 7.1(c) of this chapter~~ **an offense relating to a criminal sexual act** that was committed by the defendant;

the court may order an individual named as defendant in the prosecution of the offense to undergo a screening test for human immunodeficiency virus (HIV).

(b) Before issuing an order for testing under subsection (a), the court shall conduct a hearing at which both the alleged victim and the defendant have the right to be present. Both the alleged victim and the defendant must be notified of:

- (1) the date, time, and location of the hearing; and
- (2) their right to be present at the hearing.

(c) During the hearing, only affidavits, counteraffidavits, and medical records that relate to the material facts of the case used to support or rebut a finding of probable cause to believe the alleged victim was exposed to human immunodeficiency virus (HIV) as a result of the alleged ~~sex offense~~ **relating to a criminal sexual act** may be admissible.

(d) The written request of the alleged victim made under subsection (a) must be filed by the prosecuting attorney with the court and sealed by a court.

(e) The requirements of section 10.5 of this chapter apply to testing ordered by a court under this section.

(f) If the defendant has not been convicted, the results of a test conducted under this section shall be kept confidential. The results may not be made available to any person or public or private agency other than the following:

- (1) The defendant and the defendant's counsel.
- (2) The prosecuting attorney.
- (3) The department of correction.

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(4) The victim and the victim's counsel.

(g) A victim may disclose the results of a test to an individual or organization to protect the health and safety of or to seek compensation for:

- (1) the victim;
- (2) the victim's sexual partner; or
- (3) the victim's family.

(h) A person that knowingly or intentionally:

- (1) receives notification or disclosure of the results of a test under this section; and
- (2) discloses the results of the test in violation of this section;

commits a Class B misdemeanor.

SECTION 8. IC 35-38-2-2.3, AS AMENDED BY P.L.60-2006, SECTION 9, AND AS AMENDED BY P.L.140-2006, SECTION 24, AND P.L.173-2006, SECTION 24, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.3. (a) As a condition of probation, the court may require a person to do a combination of the following:

- (1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip the person for suitable employment.
- (2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- (3) Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
- (4) Support the person's dependents and meet other family responsibilities.
- (5) Make restitution or reparation to the victim of the crime for damage or injury that was sustained by the victim. When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.
- (6) Execute a repayment agreement with the appropriate governmental entity to repay the full amount of public relief or assistance wrongfully received, and make repayments according to a repayment schedule set out in the agreement.
- (7) Pay a fine authorized by IC 35-50.
- (8) Refrain from possessing a firearm or other deadly weapon unless granted written permission by the court or the person's probation officer.
- (9) Report to a probation officer at reasonable times as directed by the court or the probation officer.

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(10) Permit the person's probation officer to visit the person at reasonable times at the person's home or elsewhere.

(11) Remain within the jurisdiction of the court, unless granted permission to leave by the court or by the person's probation officer.

(12) Answer all reasonable inquiries by the court or the person's probation officer and promptly notify the court or probation officer of any change in address or employment.

(13) Perform uncompensated work that benefits the community.

(14) Satisfy other conditions reasonably related to the person's rehabilitation.

(15) Undergo home detention under IC 35-38-2.5.

(16) Undergo a laboratory test or series of tests approved by the state department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:

(A) the person had been convicted of ~~a sex crime listed in IC 35-38-1-7.1(e)~~ **an offense relating to a criminal sexual act** and the ~~crime offense~~ created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in IC 35-38-1-7.1(b)(8);~~ or

(B) the person had been convicted of an offense ~~related~~ **relating** to a controlled substance ~~listed in IC 35-38-1-7.1(f)~~ and the offense involved: ~~the conditions described in IC 35-38-1-7.1(b)(9)(A);~~

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

(17) Refrain from any direct or indirect contact with an individual.

(18) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child (as defined in IC 10-13-5-4).

(19) Periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9). The person on probation is

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responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

(20) If the person was confined in a penal facility, execute a reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

(A) may not exceed an amount the person can or will be able to pay;

(B) does not harm the person's ability to reasonably be self supporting or to reasonably support any dependent of the person; and

(C) takes into consideration and gives priority to any other restitution, reparation, repayment, or fine the person is required to pay under this section.

(21) Refrain from owning, harboring, or training an animal.

(22) *Participate in a reentry court program.*

(b) When a person is placed on probation, the person shall be given a written statement specifying:

(1) the conditions of probation; and

(2) that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(c) As a condition of probation, the court may require that the person serve a term of imprisonment in an appropriate facility at the time or intervals (consecutive or intermittent) within the period of probation the court determines.

(d) Intermittent service may be required only for a term of not more than sixty (60) days and must be served in the county or local penal facility. The intermittent term is computed on the basis of the actual days spent in confinement and shall be completed within one (1) year. A person does not earn credit time while serving an intermittent term of imprisonment under this subsection. When the court orders intermittent service, the court shall state:

(1) the term of imprisonment;

(2) the days or parts of days during which a person is to be confined; and

(3) the conditions.

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(e) Supervision of a person may be transferred from the court that placed the person on probation to a court of another jurisdiction, with the concurrence of both courts. Retransfers of supervision may occur in the same manner. This subsection does not apply to transfers made under IC 11-13-4 or IC 11-13-5.

(f) When a court imposes a condition of probation described in subsection (a)(17):

- (1) the clerk of the court shall comply with IC 5-2-9; and
- (2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

(g) *As a condition of probation, a court shall require a person:*

- (1) *convicted of an offense described in IC 10-13-6-10;*
- (2) *who has not previously provided a DNA sample in accordance with IC 10-13-6; and*
- (3) *whose sentence does not involve a commitment to the department of correction;*

to provide a DNA sample as a condition of probation.

SECTION 9. IC 35-41-1-19.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 19.3. "Offense relating to a criminal sexual act" means the following:**

- (1) Rape (IC 35-42-4-1).**
- (2) Criminal deviate conduct (IC 35-42-4-2).**
- (3) Child molesting (IC 35-42-4-3).**
- (4) Child seduction (IC 35-42-4-7).**
- (5) Prostitution (IC 35-45-4-2).**
- (6) Patronizing a prostitute (IC 35-45-4-3).**
- (7) Incest (IC 35-46-1-3).**
- (8) Sexual misconduct with a minor under IC 35-42-4-9(a).**

SECTION 10. IC 35-41-1-19.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 19.4. "Offense relating to controlled substances" means the following:**

- (1) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).**
- (2) Dealing in methamphetamine (IC 35-48-4-1.1).**
- (3) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).**
- (4) Dealing in a schedule IV controlled substance (IC 35-48-4-3).**
- (5) Dealing in a schedule V controlled substance**

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(IC 35-48-4-4).

(6) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(7) Possession of methamphetamine (IC 35-48-4-6.1).

(8) Possession of a controlled substance (IC 35-48-4-7).

(9) Possession of paraphernalia (IC 35-48-4-8.3).

(10) Dealing in paraphernalia (IC 35-48-4-8.5).

(11) Offenses relating to registration (IC 35-48-4-14).

SECTION 11. An emergency is declared for this act.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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